

FILED

UNITED STATES DISTRICT COURT 2014 SEP -2 AM 10:41  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

Don Lee, individually and on behalf of all others similarly situated

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_  
DEPUTY J

-VS-

Case No.: 1:13-cv-797 SS

Active Power, Inc., Steven R. Fife, and Doug Milner

## **SCHEDULING ORDER**

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following scheduling order:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by September 26, 2014.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by October 27, 2014, and each opposing party shall respond, in writing, by December 19, 2014. All offers of settlement are to be private, not filed, and the Court is not to be advised of the same. The parties are further ORDERED to retain the written offers of settlement and responses as the Court will use these in assessing attorney's fees and court costs at the conclusion of trial.
3. Each party shall complete and file the attached "Notice Concerning Reference to United States Magistrate Judge" on or before February 6, 2015.

4. The parties shall file all amended or supplemental pleadings and shall join additional parties by March 27, 2015.
5. Any party asserting claims for affirmative relief shall disclose its designation of potential witnesses, testifying experts, and proposed exhibits by serving, not filing, the designation on all parties by May 4, 2015. Any party resisting claims for relief shall disclose its potential witnesses, testifying experts, and proposed exhibits, and shall serve, not file, the disclosure on all parties by June 1, 2015. All designations of rebuttal experts shall be served, not filed, within **15 days** of receipt of the report of the opposing expert.

Any witness who will present any opinion in trial is considered an expert, and the disclosure must contain a written summary of the witness's testimony in an expert report. The Fed. R. Civ. P. 26 standard is not applicable to this paragraph; it does not make any difference whether or not the expert witness is a "retained expert," as any opinion or testimony of any expert not contained in the expert report will not be permitted at trial.

6. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within **eleven (11) days** of receipt of the written report of the expert's proposed testimony or within **eleven (11) days** of the expert's deposition, if a deposition is taken, whichever is later.
7. The parties shall complete all discovery on or before November 20, 2015.

Counsel may by agreement continue discovery beyond the deadline, but there will be no

intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

8. All dispositive motions shall be filed no later than December 11, 2015 and shall be limited to twenty (20) pages. Responses to dispositive motions shall be filed not later than fourteen (14) days after the filing of the motion and shall be limited to twenty (20) pages. A reply in support of a dispositive motion shall be filed not later than seven (7) days after the filing of the response to the motion and shall be limited to ten (10) pages, but the Court need not wait for the reply before ruling on the motion.
9. This case is set for docket call April 1, 2016, at 11:00 a.m. and trial in the month of April 2016. At docket call, the parties shall submit a short, one paragraph statement of the parties' contentions, voir dire questions, proposed jury instructions and verdict forms, exhibit and witness lists, and any motions in limine.

SIGNED this the 29<sup>th</sup> day of August 2014.

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

AGREED:

/s/ Dean Gresham  
\_\_\_\_\_  
Attorney for Plaintiff

/s/ Tyler Highful  
\_\_\_\_\_  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 25<sup>th</sup> day of July, 2013, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Dean Gresham